

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
KEVIN COOK,

Plaintiff,

-against-

VERIFIED
COMPLAINT

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT and POLICE OFFICER
JOSUE PEREZ

Defendants.

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Plaintiff, by his attorney, MARTIN L. FISHER, ESQ., as and for his Verified Complaint
herein, respectfully sets forth and alleges upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF
OF PLAINTIFF KEVIN COOK

1. That at all times hereinafter mentioned, plaintiff KEVIN COOK was and still is a resident of the County of New York, City and State of New York.
2. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, hereinafter referred to as "CITY", was and still is a municipal corporation organized and existing under and by virtue of the laws of The State of New York.
3. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY POLICE DEPARTMENT, hereinafter referred to as "POLICE", was and still is an agency of the defendant CITY.

4. That at all times hereinafter mentioned, the defendant POLICE OFFICER JOSUE PEREZ hereinafter referred to as "PEREZ" was and still is a New York City Police Officer employed by the defendant POLICE.
5. That on information and belief, at all times hereinafter mentioned, defendant PEREZ was acting in such capacity as the agent, servant and/or employee of defendants CITY and POLICE.
6. That at all times hereinafter mentioned, the plaintiff has complied with all the conditions precedent to the bringing of this action and has complied with the provisions of the statutes in such case made and provided, and in particular has presented proper Notice of Claim to the CITY and more than thirty (30) days have elapsed since the presentation of such Notice of Claim and such claim remains unadjusted, and said Notice of claim was served upon the CITY within ninety (90) days from the happening of the negligence of the CITY hereinafter described and sued upon.
7. That the within action is being commenced by service of the Summons and Complaint within one year and ninety days from the date that the cause of action arose.
8. That on or about the 9th day of February, 2012, at approximately 8:45 A.M. inside 205 East 176th Street, Bronx, New York, the plaintiff KEVIN COOK, in the County of Bronx, City and State of New York, was without just cause or provocation maliciously, intentionally and falsely accused by defendant PEREZ of having committed the aforesaid crime of Criminal Sale of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Third and Seventh Degrees.
9. That on the 9th day of February, 2012, the plaintiff was without just cause and provocation, and with reckless and negligent disregard for the truth, and without investigation and/or without a proper investigation, placed under arrest by the

defendants CITY and POLICE, their agents, servants and/or employees and in particular PEREZ.

10. That on or about the 9th day of February, 2012, and after arresting the plaintiff and depriving him of his liberty, the defendant PEREZ took the plaintiff to a police station in the County of Bronx after placing him under arrest and charged him with the aforementioned violations of the penal law.
11. That on the 9th day of February, 2012, defendant PEREZ caused the plaintiff's fingerprints and photograph to be taken in accordance with police procedures for arrests and held him on those aforementioned charges at the police station and thereafter at Bronx Criminal Court.
12. That on or about the 9th day of February, 2012, a criminal complaint was issued by defendants CITY and POLICE, their agents, servants and/or employees and in particular defendant PEREZ a criminal action against the plaintiff was commenced.
13. That solely as a result of the aforesaid, the plaintiff's life was interfered with.
14. That all charges against plaintiff KEVIN COOK were dismissed on July 9, 2012.
15. That solely as a result of the false arrest and false imprisonment of the plaintiff, he was deprived of his liberty and was subjected to scorn and ridicule and was degraded in the esteem of the community.
16. That by reason of the aforesaid, plaintiff KEVIN COOK has sustained damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

. AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF KEVIN COOK

17. That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "16" with the same force and effect as if set forth fully at length herein.
18. That following the arrest and imprisonment of the plaintiff as hereinabove mentioned, defendant PEREZ and THE CITY OF NEW YORK and its agents, servants and/or employees did wrongfully and maliciously cause a Criminal Court Complaint charging plaintiff with the heretofore named crime to be prepared.
19. That thereafter, defendant PEREZ did execute said Criminal Court complaint by swearing thereto and caused it to be filed in Bronx Criminal Court.

20. The Criminal Court Complaint and all charges lodged against plaintiff have been dismissed and sealed.
21. That the arrest and subsequent malicious prosecution of the plaintiff, as an innocent man, by defendants CITY, POLICE and PEREZ their agents, servants and/or employees was begun in malice without probable cause to succeed, was carried on maliciously and was terminated in favor of plaintiff all to his damage.
22. That the prosecution of the plaintiff and the refusal to dismiss the case against plaintiff until July 9, 2012, despite clear evidence that plaintiff did not commit and/or partake in the aforementioned violations of the penal law and was an innocent man, was carried on maliciously, to the damage of plaintiff when the case was dismissed by a Bronx Grand Jury.
23. That by reason of the aforesaid, the plaintiff, KEVIN COOK has been damaged in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF KEVIN COOK

24. That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "23" with the with the same force and effect as if set forth fully at length herein.
25. Defendant Police Officer PEREZ was at all times relevant, duly appointed and acting officers of POLICE.
26. That at all times mentioned, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies, customs and usage of the State of New York and/or The City of New York.
27. That plaintiff KEVIN COOK is at all times relevant herein, a citizen of the United States and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.
28. That on the 9th day of February, 2012, the defendant, armed police while effectuating the seizure of the plaintiff did, search, seize, assault, fondle, strip search and grab the person of KEVIN COOK without a court authorized arrest warrant. The plaintiff was falsely arrested and maliciously prosecuted without the defendants having probable cause to do so.

29. That the above action of the defendants resulted in plaintiff being deprived of the following rights under the United States Constitution:
 - a. Freedom from assault to his person, including a strip search
 - b. Freedom from illegal search and seizure
 - c. Freedom from false arrest
 - d. Freedom from battery to his person.
30. That the defendants subjected the plaintiff to such deprivations, either in a malicious or reckless disregard of plaintiff's rights or with a deliberate indifference to those rights enumerated in the fourth and fourteenth amendments of the United States Constitution.
31. That the direct and proximate result of the defendants' acts is that the plaintiff has suffered severe and permanent injuries of a psychological nature.
32. That by reason of the aforesaid, plaintiff KEVIN COOK has sustained damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF KEVIN COOK

33. Plaintiff repeats, reiterates and realleges all the allegations contained in paragraphs "1" through "32" with the same force and effect as if set forth fully at length herein.
34. That defendants CITY and POLICE have grossly failed to train and adequately supervise its police officers in the fundamental law of arrest and search and seizure, especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime, and that the arrest should be based on probable cause.
35. That the CITY and POLICE were negligent by failing to implement a policy and instruct police officers who, without the possession of a court authorized arrest or search warrant, said police officers are not to arrest individuals such as plaintiff here where probable cause is lacking.
36. That the foregoing acts, omissions and systemic failures are customs and policies of the defendants CITY and POLICE which caused the police officers to falsely arrest, seize illegally, strip search and assault and battery plaintiff under the belief that they would suffer no disciplinary actions for their failure to take proper and prudent steps in

this case.

37. That by reason of the aforesaid, plaintiff KEVIN COOK has sustained damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF KEVIN COOK

- 38 That plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "37" with the same force and effect as if set forth fully at length herein.
39. Defendants CITY and POLICE were negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the police officer defendants knew or should have known of the bad dispositions of said police officers or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by CITY and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals.
40. That by reason of the aforesaid, plaintiff KEVIN COOK has sustained damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against defendants in the sum of ONE MILLION (\$1,000,000.00) DOLLARS for the First Cause of Action, ONE MILLION (\$1,000,000.00) DOLLARS, for the Second Cause of Action, ONE MILLION (\$1,000,000.00) DOLLARS for the Third Cause of Action, ONE MILLION (\$1,000,000.00) DOLLARS FOR THE FOURTH CAUSE OF ACTION, ONE MILLION (\$1,000,000.00) DOLLARS FOR THE FIFTH CAUSE OF ACTION and further demands judgment against defendants, their agents, servants and/or employees for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS, together with the interest, costs and disbursements of this action.

Dated: Ossining, New York
May 3, 2013

Yours, etc.,

MARTIN L. FISHER, ESQ.
Attorney for Plaintiff
5 Ganung Drive
Ossining, New York 10562
(914) 762-3081

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

The undersigned, an attorney duly admitted to practice law in the courts of the State of New York shows:

That deponent is MARTIN L. FISHER, ESQ., attorney for the plaintiff in the within action; that deponent has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, deponent believes them to be true. Deponent further states that the reason this verification is made by deponent and not by plaintiff is that plaintiff is not now within the County in which deponent maintains his offices. That the grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: reports, statements and documents in your deponent's file.

The undersigned affirms the foregoing statements are true under the penalties of perjury.

Dated: Ossining, New York
May 3, 2013


MARTIN L. FISHER